In the High Court of Uttaranchal, at Nainital

Special Appeal No. 75 of 2004

Rajeev Barthwal S/o A.M. Barthwal
R/o O- 152, Vasant Vihar,
P.O. New Forest, Dehradun ….. Petitioner/Appellant.

Versus

1- Union of India through Ministry
Of Labour, New Delhi.
2- Deak Officer, Ministry of Labour
Govt. of India, New Delhi.
3- Forest Research Institute,
Dehradun through its Director.
4- Eagle Hunter Selection Limited,
Lane No. 2 P.O. Clement
Town, Dehradun …… Respondents.

Sri M.C. Pant, Advocate for the appellant.
Sri V.B.S. Negi. Addl. Solicitor General, for Union of India..

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 10th May, 2006.

By way of this Special Appeal the appellant has challenged the judgment and order dated 15-10-2004, passed by the Single judge of this Court in Civil Writ Petition No. 155 of 2003 (S/S) Rajeev Barthwal versus Union of India and others.

2- Brief facts giving rise to this appeal are that the appellant by way of writ petition sought the prayer for quashing the order dated 21-3-2001 passed by the Ministry of Labour, Government of India, whereby the dispute raised by the appellant was refused for being referred for adjudication to the Labour Court. As per the averments made in the writ petition, the petitioner/appellant was employed in the Forest Research Institute, Dehradun in perennial nature of work since 1-5-1999. However just to deprive the appellant of his service benefits, the said institute introduced camouflage and contract system whereby the appellant was shown engaged under a contractor for his services. It was alleged that the appellant was

Working as Account Clerk with the respondent No. 3 w.e.f. 1-5-1999 but his engagement was shown through respondent No. 4, i.e. M/S Eagle Hunter Solutions Ltd. During the service period, the appellant remained under control and administration of respondent No. 3, i.e. Forest Research Institute and was getting salary of Rs. 2,376/-. On 8-6-2002 appellant moved an application to respondent No. 3 for increase in his salry in alternative for regularizing his services. A union named as F.R.I. Mazdoor Union, Dehradun raised industrial dispute through and application dated 12-11-2001 for the regularization for the services of the appellant. The said application of Union was forwarded to the Conciliation Officer and Central Assistant Labour Commissioner, who directed respondent Nos. 3 and 4 to settle the issue and also fixed 20-11-2001 for conciliation in his office. The appellant continued to work till 14-11-2001 where-after verbally the respondent Nos. 3 and 4 refused to accept the services fo the appellant and did not permit him to join his duties. On this, appellant moved an application under Section 13-A of Industrial Disputes At, 1947 before the Assistant Labour Commissioner on 19-11-2001. The respondents filed their reply before the said authority. The Assistant Labour Commissioner submitted his report to the Government that no amicable settlement was possible on which respondent No. 1 again started conciliation proceedings before the Regional Labour Commissioner, Kanpur where even after several dates being fixed no result came out and the proceedings were closed on 14-25-2003. Consequently, impugned order dated 21-3-2003 was passed informing that the dispute cannot be referred for adjudication to the Labour Court on the ground that the workman (appellant) left the job of his own and the contractor was ready to place the workman in other branches, where the vacancy exists. The appellant has challenged the order declining to refer the dispute to the Labour Court on the ground that he was a regular employee as Account Clerk of the F.R.I. and not working under contractor. It is further alleged the writ petition that the C.C.S., C.C.A. rules prohibit the engagement of contract employee. Also, it is alleged that as per the principle of the law laid down by the Apex Court in Rourkela

Shramik Sangh Vs. Steel Authority of India Ltd. 2003 S.L.R. page 251, a veil shod be lifted to see the controversy if the person is actually working under a contractor.

3- The counter affidavit has been filed before the learned Single Judge on behalf of the respondent No. 3 in which it has been stated that the petitioner was an employee of M/s Eagle Hunter Solutions (p) Ltd., Dehradun and not an employee of F.R.I. It was further sated that the petitioner while getting employment entered into an agreement with M/s Eagle Hunter Solutions (p) Ltd. It was also alleged in the counter affidavit that it is totally false and baseless to say that the appellant has ever remained posted as Account Clerk in F.R.I. There is no such designation in the Institute. The appellant used to get his salary from the aforesaid firm with whom he had an agreement. A copy of extract of attendance register has been annexed to the counter affidavit. By entering into the contract of the above firm, the appellant does not become the employee of the institute. Defending the impugned order it was stated in the counter affidavit that the dispute was not referable as industrial dispute because there was no relationship of employee and employer between the respondents. It is further stated in the counter affidavit that M/S Eagle Hunter Solutions (p) Ltd took a standing before the Assistant Labour Commissioner (Central) that the appellant was his employee who had nto join his duties now at Banglore which he did comply. Consequently, the contractor was ready to engage him in some other branch.

4- Respondent No.4, i.e., Eagle Hunter Solutions (p) Ltd has filed its own counter affidavit in which it was sated that the appellant being an employee of respondent No. 4 was entrusted the duties at the places where there was work on contract. Respondent No. 4 had worked with the F.R.I. only for one year, where after all the workers inducing the petitioner/appellant were withdrawn by the respondent No. 4 Defending the impugned order challenged by the appellant it was stated by raisin the industrial dispute that the appellant cannot compel the respondent No. 4 or respondent No. 3 to engage him in the institute, where the work on contract was already over.

5- The learned Single judge after having heard learned counsel for the parties and perusing the pleadings dismissed the writ petition vide impugned judgment and order dated 15-10-2004.

6- Feeling aggrieved by the aforesaid judgment and order, this special appeal has been filed.

7- Heard learned counsel for the parties and perused the record.

8- Having considered the arguments advanced by the parties and perusing the material available on record, we are of the view that the learned Single Judge erred in reaching this conclusion that there was no relationship of master and servant between the appellant and the F.R.I. The subject matter of the writ petition before the learned Single Judge was as to whether the Government can decline the reference by deciding the same on merits.

9- The impugned judgment shows that the learned Single Judge was of the view that the reference was rightly refused by the Conciliation Officer for being sent for adjudication to the Labour Court. We are of the opinion that this view is incorrect as the duties of the Conciliation Officer are defined in the Industrial Dispute Act and no power of adjudication is given to him as his job was confined and restricted to the only question whether an industrial dispute existed or was apprehended but in any case he was not required to go into the merits an legal aspects of the case.

10- The Hon'ble Apex Court in case **Basti Sugar Mills Ltd. Vs. Ram Ujagar and others** reported in 1963 I.L.L.J. 447 has held that-

> *"Section 2(1) of the Uttar Pradesh Industrial Disputes Act, 1947, contains an inclusive definition of employer. The effect of Sub Cl. (iv) of S. 2(i) is that where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under sub person of the whole or any part of any work which ordinarily is a part of the industry, the owner of such industry is an employer also for the workmen employed by such contractor. The obvious purpose of this extended definition of the word "employer" was to make the owner of the industry, in the circumstances mentioned in the sub-*

Clause, the employer of the workmen engaged in the work done through contract.

The words used in the definition of "workmen" in S.2(z) of the Act are themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word "employer" included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between "employer" and workmen. It was with a view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by Sub-c. (iv) of S. 2(i).

Hence, persons employed by a contractor to do the work of removal of press-mud in a sugar factory would be the employees of the sugar factory by virtue of the definition of S. 2(z) read with S. 2(i)(iv) of the Act."

11- The Hon'ble Apex Court in an another decision **Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others** reported in **[2001 (91) FLR 182]** has also held that-

"After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section-2 of the Industrial Disputes Act if (i) the concerned Central Government Company/Undertaking or any undertaking is included therein co nominee, (ii) industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company, or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government."

12- The Hon'ble Supreme Court in an another decision **Dhanbad Colliery Karamchari Sangh Vs. Union of India and others** reported in **1991 Suppl. (2) Supreme Court Cases 10** has also held that-

> *After hearing learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the opinion that this appeal must succeed. The Central Government instead of referring the dispute of adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act. 1947, It itself decided the dispute which is not permissible under the law. We, accordingly, allow the appeal, set aside the order of the High Court and the Central Government and direct the Central Government to refer the dispute for adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act, 1947. We further direct the Central government to make the reference within three months."*

13- In view of the aforesaid decisions of the Hon'ble Apex Court it is quite clear that the Government instead of deciding the dispute itself should refer the dispute to appropriate Industrial Court for adjudication.

14- In the instant case the petitioner moved/appellant moved an application U/S 13-A of the Industrial Disputes, Act 1947 before the Assistant Labour Commissioner on 19-11-2001 and the respondents filed their reply before the said Authority. The Assistant Labour Commissioner has reported to the Government that no amicable settlement was possible and on this report the Ministry of Labour (respondent No.1) again started conciliation proceeding before the Regional labour Commissioner and in these proceedings no result came out and the proceedings were ultimately closed. The impugned order dated 21-3-2003 was passed by the Conciliation Officer that the dispute cannot be referred for adjudication to the Labour Court on the ground that the workman left the job on his own and the contractor was ready to place the workman in other branches where the vacancy exists. It is thus clear that the order passed by the Conciliation Officer declining to

refer the dispute to the Labour Court is against the principle of law laid down by tehApex Court in the decisions cited above.

15- With the result this Special Appeal is allowed. The impugned judgment and order dated 15-10-2004 passed by the learned Single Judge is set aside. Consequently the writ petition is allowed and the respondent No. 1 is directed to refer the dispute for adjudication to the appropriate Industrial Court. The respondent No. 1 is also directed to make the reference within three months.

(B.C. Kandpal, J.) **(P.C. Verma, j.)**

ISB